

# New WSIB Policies on Chronic and Traumatic Mental Stress Coming Into Effect

November 1, 2017

On May 17, 2017, the Ontario government passed Bill 127, *Stronger, Healthier Ontario Act (Budget Measures), 2017*. By amending section 13 of the *Workplace Safety and Insurance Act, 1997* ("WSIA"), Bill 127 provides that workers are entitled to benefits under their insurance plan for chronic and traumatic mental stress arising out of and in the course of employment.

## Chronic Mental Stress Policy

Applying to accidents on or after January 1, 2018, the new WSIB Operational Policy Manual ("OPM") document 15-03-14, *Chronic Mental Stress*,<sup>1</sup> entitles a worker to benefits for chronic mental stress arising out of and in the course of the worker's employment. However, a worker is not entitled to benefits for chronic mental stress caused by decisions or actions of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker, or to terminate his/her employment.

According to this policy, a worker will generally be entitled to benefits for chronic mental stress if an appropriately diagnosed mental stress injury is caused by a substantial work-related stressor arising out of and in the course of the worker's employment. In order to consider entitlement for chronic mental stress, the WSIB decision-maker must be able to identify the event(s) which are alleged to have caused the chronic mental stress.

In the WSIB Work-Related Chronic Mental Stress Policy consultation document, the WSIB provides some illustrative examples of what would and would not qualify for benefits under these new policies. One of the examples given by the WSIB is "a teacher that is the subject of demeaning comments from her vice-principal on a regular basis, quite often in front of her teaching colleagues and develops an anxiety disorder as a result, would likely be entitled to benefits."<sup>2</sup> The teacher in the WSIB example would also have to meet the conditions for WSIB benefits set out above, including the requirement to have a diagnosis from a regulated health professional.

## Traumatic Mental Stress Policy

Applying to accidents on or after January 1, 2018, the new WSIB OPM document 15-03-02, *Traumatic Mental Stress*,<sup>3</sup> entitles a worker to benefits for traumatic mental stress arising out of and in the course of the worker's employment. However, a worker is not entitled to benefits for traumatic mental stress caused by decisions or actions of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker, or to terminate the employment.

According to this policy, a worker will generally be entitled to benefits for traumatic mental stress if an appropriately diagnosed mental stress injury is caused by one or more traumatic events arising out of and in the course of the worker's employment. A traumatic event may be a result of a criminal act or a horrific accident, and may involve actual or threatened death

or serious harm against the worker, a co-worker, a worker's family member or others. Traumatic events include, but are not limited to:

- witnessing a fatality or a horrific accident;
- witnessing or being the object of an armed robbery;
- witnessing or being the object of a hostage-taking;
- being the object of physical violence;
- being the object of death threats;
- being the object of threats of physical violence where the worker believes the threats are serious and harmful to self or others (e.g., bomb threats or confronted with a weapon);
- being the object of workplace harassment that includes physical violence or threats of physical violence (e.g., the escalation of verbal abuse into traumatic physical abuse); and
- being the object of workplace harassment that includes being placed in a life-threatening or potentially life-threatening situation (e.g., tampering with safety equipment; causing the worker to do something dangerous).

In all traumatic mental stress cases, the WSIB decision-maker must be satisfied, on a balance of probabilities, that the traumatic event(s) or the cumulative effect of a series of traumatic events arose out of and in the course of the worker's employment, and caused, or significantly contributed to, an appropriately diagnosed mental stress injury.

### **Commentary**

Three conditions need to be met for a person to be entitled to WSIB benefits under these new policies:

- an appropriate regulated health professional, such as a family physician, provides a diagnosis based on the Diagnostic and Statistical Manual of Mental Disorders ("DSM");
- the person has experienced a substantial work-related stressor(s), such as workplace bullying or harassment; and
- the work-related stressor(s) was the predominant cause of the appropriately diagnosed mental stress injury.

The legislative changes and WSIB Policies come into effect on January 1, 2018. Employees who first seek medical attention or are diagnosed with a work-related chronic mental stress disorder or traumatic mental stress disorder on or after January 1, 2018 may therefore be entitled to benefits under the change in legislation and WSIB policy. We will continue to monitor these legislative changes and the implementation of the WSIB policy.

<sup>1</sup> [Workplace Safety Insurance Board](#), "Policy 15-03-14, *Chronic Mental Stress*".

<sup>2</sup> [Workplace Safety Insurance Board](#), "Work-Related Chronic Mental Stress Policy Consultation", at page 2.

<sup>3</sup> [Workplace Safety Insurance Board](#), "Policy 15-03-02, *Traumatic Mental Stress*".

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